

Application number: 09/628098**Art Unit:** 3624**Applicant:** Khai Hee Kwan**Examiner:** Steven R Wasylchak**Title:** Computer System and Method for online display, negotiation and management of loan syndication over computer network.RECEIVED
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AUG 29 2004

Status of Claims as per Action Letter mailed 25 JUNE 2004

- 5 1. Claims 1-20 are rejected under 35 USC 103(a) as being unpatentable over **Herschkorn (US 6691094)**.

Amendments to Claims as per this response.

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We respectfully ask the examiner to enter the necessary amendments as detailed in Appendix 1. (marked version).

15

Summary of our response.

- 20 **In Herschkorn (US 6691094)**, this invention deals mainly in listing and trading of a loan instrument over a network via the matching of bids and offers (Col 1 line 5-10) . The mentioned of "syndication" in the said prior art are found in Col 1 line 15 and we quoted " Large corporations and trusts arrange bank loans in facilities provided by a group of banks and financial institutions, otherwise known as a syndicate " and in Col 1 line 37 "A revolver provides a commitment from the syndicate for the borrower to draw upon a set
- 25 amount of money until the maturity date " and in Col 2 Line 31 "An administrative agent provides the processing of paperwork and movement of funds associated with a bank loan on behalf of the syndicate and the borrower." and in Col 9, line 52 " In addition, even if the bank loan was allocated in even million dollar increments during syndication, prepayments and scheduled amortization payments may result in borrowers owing odd
- 30 amounts to members of the bank group."

- 35 In **Elan Pharmaceuticals, Inc and Athena Neurosciences, Inc Vs Mayo Foundation for Medical Education and Research**, (United States Court of Appeals for the Federal Circuit Case 00-1467, Decided October 2, 2003), the learned judge said " The disclosure in an assertedly anticipating reference must be adequate to enable possession of the desired subject matter. It is insufficient to name or describe the desired subject matter, if it cannot be produced without undue experimentation." It is clear from the above that the word syndicate is referencing a group of banks to perform syndication which is well known in the art and syndicating or syndication refers to the process of getting the banks
- 40 collectively to lend. However, there is nothing in the entire prior art that teaches how the syndication is done as per our claimed invention. We submit that this teaching in prior art by itself could not produced our claimed invention without undue experimentation and as such does not anticipate our claimed invention.

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Further, merely knowing a collection of banks to arrange a loan known as 'syndication' does not by itself place the knowledge whereby one skilled in the art can practice as per our claims. While it is admitted there are many ways to syndicate and syndicating is old in the art, the Federal Circuit has long held that the mere availability of the technology and the incentive to apply it do not make the result obvious. In re Deuel, 51 F.3d 1552, 1559 (1995). "the mere fact that a device or process utilizes a known scientific principle does not alone make that device or process obvious." Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1053, 5 U.S.P.Q.2D (BNA) 1434, 1440 (Fed. Cir. 1988). See also Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 1462, 221 U.S.P.Q. (BNA) 481, 489 (Fed. Cir. 1984). In this case, the known business principle is "syndication". However, there is nothing in Herschkorn to suggest a loan syndication system nor methods such as collective amendments of loan documents or with feedback amongst syndicating members within a network system as claimed here. But more importantly, Herschkorn teaches a loan trading system and NOT syndication.

Further, there is no motivation evidenced by the examiner to modify a loan trading system in Herschkorn to one of syndication. "unless the prior art suggested the desirability of [such a] modification" or replacement. In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. (BNA) 1125, 1127 (Fed. Cir. 1984). This is the most important requirement for an obviousness determination even where only one prior art is used, there must be a motivation raised. See B.F. Goodrich v. Aircraft Braking Sys. Corp., 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996). Why would Herschkorn modified his invention to syndicating a loan when his primary goal is to trade loan instruments?

Our subject matter is one of managing and syndicating a loan and not loan trading. In short, syndicating as taught in our specification must come first before any loan can exist and further as traded. See Corning Glass Works v. Sumitomo Elec. U.S.A., Inc., 868 F.2d 1251, 1255-57, 9 USPQ2d 1962, 1965-66 (Fed. Cir. 1989) ("To read the claim in light of the specification indiscriminately to cover all types of optical fibers would be divorced from reality.") If a loan is already executed or formed then there is no need for any syndication, the process of grouping banks to form a loan.

The Table A below shows the indicative time line for the loan cycle from conception to management.

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Table A.

time=0	Borrower approach bank
time=1	Bank decided amount too huge and wants to syndicate it. Received mandate from borrower and become syndicator bank or originator or lead manager as commonly known.
time=2//Syndication opened	Syndicate to other banks by making offer
time=3	Other banks agreed in principle to commit
time=4	Due diligence
time=5	Ratify loan agreement by each lenders & borrower
time=6 //Syndication closed	Exchange loan agreements with borrower
time=7//Loan management opened	Transfer funds to syndicator
time=8	Syndicator transfer funds to borrower
time=9// Herschkorn	Loan can be traded if allowed in loan agreement usually by assignment but other methods can be employed. Assignment is a separate agreement subject to the first loan agreement.
time=10	Borrower make repayment to syndicator which disbursed the funds in according to loan agreement
time=11	Original lender who has sold loan received payment and transfer to the buyer in accordance to assignment agreement.
time=12//Loan management closed	Loan amount fully paid.
Note: We did not include trading of loans in our specification as our system is designed to create loans rather than to trade them.	

- 5 The word syndicating is from the word syndicate and its ordinary dictionary meaning is as follows :

An association of people or firms authorized to undertake a duty or transact specific business.

- 10 *An association of people or firms formed to engage in an enterprise or promote a common interest.*

A loose affiliation of gangsters in control of organized criminal activities.

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An agency that sells articles, features, or photographs for publication in a number of newspapers or periodicals simultaneously.

A company consisting of a number of separate newspapers; a newspaper chain. The office, position, or jurisdiction of a syndic or body of syndics.

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*Source: The American Heritage® Dictionary of the English Language, Fourth Edition
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The word " syndication " is also defined as

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n. Act or process of syndicating or forming a syndicate.

Source: Webster's Revised Unabridged Dictionary, © 1996, 1998 MICRA, Inc.

15 In order to prevent a hindsight-based obviousness analysis, it has been established that the relevant inquiry for determining the scope and content of the prior art is whether there is a reason, suggestion, or motivation in the prior art or elsewhere that would have led one of ordinary skill in the art to combine the references as discussed previously. See, e.g., *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("[T]he Board must identify specifically . . . the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); *In re Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617 ("Case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."). "Determining whether there is a suggestion or motivation to modify a prior art reference is one aspect of determining the scope and content of the prior art, a fact question subsidiary to the ultimate conclusion of obviousness." *Sibia Neurosciences, Inc. v. Cadus Pharma. Corp.*, 225 F.3d 1349, 1356, 55 USPQ2d 1927, 1931 (Fed. Cir. 2000); *Tec Air, Inc. v. Denso Mfg., Inc.*, 192 F.3d 1353, 1359, 52 USPQ2d 1294, 1298 (Fed. Cir. 1999) (stating that the factual underpinnings of obviousness include whether a reference provides a motivation to combine its teachings with those of another reference).

35 It is clear that the examiner has not appreciated the difference between the subject matter (loan trading) found in *Hersckorn* and in our claimed invention (loan syndication), the difference in view as a whole is not obvious as the examiner did not articulate this difference to show its obviousness nor any motivation could be found. Therefore, we respectfully submit that prima facie for obviousness has not been satisfied and ALL our claims should be allowed. The following will detail our individual response to each of the rejections.

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5 In rejecting claim 1, the Examiner states that although Herschkorn failed to teach a system wherein "communication to the final borrower over the network", this feature is old and well known in the brokerage art as such it would be obvious to one skilled in the art to implement this feature for the advantage of a quick, secure and timely response.

10 This rejection is respectfully traversed.

Applicant respectfully disagrees with the Examiner's assertion that this feature is old and well known in the art. The examiner does not cite any references or publication nor does the examiner provide any other evidence to support this contention.

15 Firstly, the subject matter of syndication means the syndicator is trying to entice other potential lenders to participate by committing to the creation of a loan on behalf of a client or final borrower, commonly known as the primary market fund raising. There is no trading as such in Herschkorn and solicitation does not necessarily lead to trading as a potential lender may decide to withdraw or rejected by final borrower. Brokerage as it is
20 known in Herschkorn is the buying and selling (trading) of an instrument already in existence such as in a secondary market debt market. It has nothing to do with the creation of a primary instrument. Further it is unusual for participants in the secondary market to communicate to the final borrower nor is there any evidence for the buyer or seller to know each other if a broker is used. Even if the loan documentation specifically
25 requires buyers of the loan to communicate to final borrower, this is mainly for the reason of accepting the assignment by said borrower, a process that has nothing to do with syndication. The original obligation of the final borrower to the loan agreement stands and is not affected by a deed of assignment. (Herschkorn at Col 2 line 24). Therefore there is no requirement to communicate to said and even if there is a need it would not
30 require to be in a fast, secure and timely as it is well known in most assignment agreement that final borrower will not unreasonably withheld any transfer by assignment. This requirement is usually build into the loan agreement.

35 Further in a secondary market as found in Herschkorn, when a buyer is buying financial instruments through a broker electronically there is no requirement to know who the seller is. The broker facilitates the transaction and bears the burden to ensure delivery.

Secondly the examiner did not specify which aspect of Herschkorn's invention is not quick, insecure to enable a quick response such that one skilled in the art would find it
40 advantage to implement said in order to reveal this need to communicate with the final borrower.

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We submit there is nothing in Herschkorn to show it is slow, insecure, untimely in connection to the need to communicate to the final borrower, particularly in an electronic trading environment. Being slow alone does not mean it lacks the capability to communicate to the borrower. The question is whether it is desirable and hence the motivation to communicate to borrower wherein the purpose of a loan trading system would be obvious to show syndication. As we mentioned if we framed the question as above, it becomes illogical since a loan trading system and syndication system are completely different or separate. Even if there is a need to communicate to borrower, their purposes are different as explained above which bring us to the point that the examiner did not appreciate the differences between the two. Therefore the motivation of overcoming slow, insecure etc even if recognised as obvious would only make Herschkorn's invention a better trading system and NOT a syndication system, looking at the claimed as a whole.

Herschkorn describes an invention where the primary or secondary holders of the debt instrument (loan) are selling down their portions of the loan in an network which we are sure must be secure, fast and timely in order to response to a brokerage trading scenario. To assert that it is not appears to be beyond what is taught by the prior art as such we must disagree with the examiner assertion. The examiner has not even define the real problem here which is why would one skilled in the art of loan trading system find it obvious to transform it to a syndication system ? Surely it has nothing to do with security issues or untimely.

As the Federal Circuit pointed out in Re Zurko, " to say that the missing step comes from the nature of the problem to be solved begs the question because the Board has failed to show that this problem had been previously identified anywhere in the prior art ." In re Zurko, 111 F.3d 887, 42 USPQ 2d 1476, 1479 (Fed Cir), en banc granted, 116 F.3d 874 (Fed Cir 1997) ("Zurko I").

Obviousness determination

A claimed invention is unpatentable due to obviousness if the differences between it and the prior art "are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." 35 U.S.C. § 103(a) (2000).

The examiner's unstated view is that the "syndication and managing a loan" is linked to trading of said in Herschkorn would render syndication and managing obvious when trading of loan is known to one skilled in the art. Even if syndication and managing a loan is well known, we respectfully reject such proposition given the explicit 'trading' meaning found in 'Bank Loan Trading' (Col 2 line 20 to 65) as taught by Herschkorn nor are there any teaching to suggest our combined features/elements are found. No

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motivation has been evidenced by the examiner as required for obviousness determination.

5 Even so basing on a single reference, a motivation must be articulated. See B.F. Goodrich
v. Aircraft Braking Sys. Corp., 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir.
1996) (motivation to modify a single reference). Here there is nothing in Herschkorn to
even suggest such modification in particular why to modify a loan trading system to one
of syndicating a loan. The examiner offered no evidence suggesting what might have led
10 an ordinary artisan in this field to modify to establish prima facie. Stated simply, knowing
trading of loans does not charge one skilled in the art to syndicating of loans without
some motivation.

15 "[t]he consistent criterion for determination of obviousness is whether the prior art would
have suggested to one of ordinary skill in the art that this process should be carried out
and would have a reasonable likelihood of success, viewed in the light of the prior art." In re Dow Chem., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

20 The first requirement is that a showing of a suggestion, teaching, or motivation to
combine the prior art references is an "essential evidentiary component of an obviousness
holding." C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232
(Fed. Cir. 1998). This evidence may flow from the prior art references themselves, the
knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the
problem to be solved. See Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d
1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996).

25 In reference to the nature of the problem to be solved, Herschkorn has not revealed our
problem whereby the need to diversify risk between several lenders resulting in a need
for syndicating a particular loan. Basically Herschkorn's problem is the non-availability
of an electronic loan trading system and that current systems are not suitable (Col 4 line
30 1 to line 60) which as we mentioned is not connected to originating a loan by syndication
means nor relates to diversifying risks.

35 In this case the difference is not minor but significant. In re Chu, 66 F.3d 292, 298, 36
USPQ2d 1089, 1094 (Fed. Cir. 1995) (stating that even when changes from the prior art
are "minor" or "simple," an inquiry must be made as to whether "the prior art provides
any teaching or suggestion to one of ordinary skill in the art to make the changes"
(quoting Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 935, 15 USPQ2d
1321, 1324 (Fed. Cir. 1990)).

40 Even if one skilled in the art would be able to consider various ways to create a loan and
to diversify risks between lenders simultaneously, that is not sufficient when there is no
evidence found above to assume one skilled in the art can reach the unknown
'syndicating and managing a loan over a network as our claim'. See W.L. Gore &

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Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13

(Fed. Cir. 1983) ("To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher."). Skill in the art does not act as a bridge over gaps in substantive presentation of an obviousness case, but instead supplies the primary guarantee of objectivity in the process. See Ryko Mfg. Co. v. Nu-Star, Inc., 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991).

- 10 The second requirement is that the ultimate determination of obviousness "does not require absolute predictability of success. . . . [A]ll that is required is a reasonable expectation of success." In re O'Farrell, 853 F.2d 894, 903-904, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); see also In re Longi, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). Given there is nothing to teach modifying a loan trading system to our
- 15 claimed invention, hence there is no question on reasonable expectation of success as this feature was never identified or revealed in Herschkorn.

- Finally, the prior art reference (or references when combined or singularly) must teach or suggest all the claim limitations. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA
- 20 1974). As such there is a need to consider all the elements in claim 1 as discussed below.

- In the preamble "server for negotiating and managing loan syndication". The critical element here is negotiating and managing loan syndication which is not found in Herschkorn. See In re Stencel, 828 F.2d 751, 754, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987)
- 25 (the preamble is interpreted in light of the invention as a whole); Perkin- Elmer Corp. v. Computervision Corp., 732 F.2d 888, 896, 221 USPQ 669, 675 (Fed. Cir.), cert. denied, 469 U.S. 857 (1984) (the limitations stated in the preamble give meaning to the claim and can serve to define the invention).

- 30 In the body "having a database of the committed loan syndication maintained at the server" The examiner provided evidence claim 8,9; col 1, line 11-23, col 2 line 20-32 and col 17, line 6-17 from Herschkorn.

- We submit our examination of Claim 8 and 9 refers to some storage device for trading
- 35 loans BUT not committed loan syndication. At the committed level, this means the lenders are committed in principle subject to due diligence before ratifying the loan agreements. It is only when the loan agreements are ratified by ALL lenders jointly committed that the syndication is closed and the loan instrument is formed usually by document exchange. In contrast, in loan trading this means the loan commitment
- 40 (referencing the portion of the loan committed being a loan is already in existence) is transferred by assignments adhering to the loan agreements. The fact that a loan can be assigned inherently reveals there is no syndication as assignment must reference to an executed loan agreement where a loan is already FORMED.

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5 The examiner provided no reason to show why it would be obvious to reveal our loan syndication from trading of loans. Col 1 line 11-23 shows the background towards the creation of loan. In particular, Herschkorn wrote " Large corporations and trusts arrange bank loans in facilities provided by a group of banks and financial institutions, otherwise known as a syndicate " etc..

10 However, from this statement alone which basically defined syndicating as a group of banks, there is no express teaching of committed loan syndication maintained in server. "a reference must be considered not only for what it expressly teaches, but also for what it fairly suggests," In re Burckel, 592 F.2d 1175, 1179, 201 USPQ 67, 70 (CCPA 1979). We cannot agree with the examiner that Herschkorn "fairly suggests" a process for negotiating and managing loan syndication by mentioning syndication.

15 Herschkorn only defined the meaning of syndication which is well known in the art as well as found in most dictionary as we have pointed out. Herschkorn did not describe having committed loan syndication maintained in server for the purposes of his trading of loan. This in fact is an illogical conclusion as a loan being syndicated is not a loan as yet and if it is not then how could it be assigned, a technical term referring to transferring of loan commitment by selling it.

25 Even if syndication is well known, the precise methods or advantages found in our claim to accomplish this are not well known nor are they described by Herschkorn, in particular, it is not well known to do via a computer network wherein server stored the committed loan syndication as in the claimed invention. "the mere fact that a device or process utilizes a known scientific principle does not alone make that device or process obvious." Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1053, 5 U.S.P.Q.2D (BNA) 1434, 1440 (Fed. Cir. 1988). See also Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 1462, 221 U.S.P.Q. (BNA) 481, 489 (Fed. Cir.1984).

30 Col 2, line 20-32 refers to trading of bank loans and basically described the way bank loans are traded by way of assignment. However this has no connection to syndication nor inherently shows our elements. This paragraph also describe the auction and brokering process for trading of loan but nothing on syndicating such a loan. The examiner did not reason out how this would inherently show our claimed invention and no evidence was shown.

40 Col 17 line 6-17 deals with bank loan auctions, bypass dealers etc but nothing inherently shows syndicated or syndication of loans. The examiner also did not articulate how such bank loan trading would reveal our subject matter of syndicating loan ie the process of getting a group of banks to arrange bank loans.

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" having the loan syndicator post a bid to an online auction block maintained at the server for a predetermined period of time; "

5 The examiner provided evidence in claim 1 and fig 3 and col 17 lines 20-42. However as mentioned none of these inherently shows loan syndicator, the element missing. Claim 1 shows buyer and sellers of a LOAN, these are not loan syndicator, ie the bank which is trying to group other banks. Fig 3 shows bid and offer page for a loan while our teaching is one for formation of a loan. (ie loan does not exist as yet). Col 17 lines 20-42 describes the standard auction for a bank loan and not one for formation of a loan by
10 syndication.

" in response to a request from lenders to the server identifying a given loan syndication requirements, identifying a set of bids within that requirements; "

15 The examiner provided evidence from abstract; fig 2,3. However there is nothing here to support one of loan syndication requirements. Abstract deals in general about the loan trading system similar to an electronic share trading, but there is nothing about the creation of loan or share or how other banks or groups are syndicating by a network. Fig
20 2 shows a display of the various loans on offer but nothing here shows inviting other lenders to bid to form or create the loan. Fig 3 shows a bid and offer page for a LOAN already in existence and not for forming/creating one. Even if such a system can be modified, the motivation must be found in the prior art. The examiner did not articulate
25 any to support such inherency or obviousness.

" in response to the lenders accepting a given one of the set of bids posted by the loan syndicator, sending secure electronic message to the loan syndicator and lenders confirming a loan syndication commitment in principle by said lenders and sending an
30 acceptance message to the lenders when the loan syndicator and final borrower have accepted the lenders' in principle commitment "

35 The examiner provided Fig 9 which details Auction post confirmation page. It is clear from this evidence that Herschkorn is teaching to confirm the purchase or sell of a loan that is already in existence. The characteristics of this can be observed from the word " assignment" and credit document as found in Fig 9. There is however nothing to show it can be adapted for a syndication.

40 The examiner further by providing col 6 line 35-46. This shows a reverse offer in action but nothing inherently to reveal its suitable for syndicating a loan.

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"in response to the acceptance by the loan syndicator and the final borrower, the lenders are provided an opportunity to ratify their commitments by cause to legally authorizing their commitments or to withdraw: "

- 5 The examiner provided Fig 6 as evidence. However there is NO Fig 6 in Herschkorn. The series of Figs available are Fig 6A to 6G but no Fig 6. Col 3 line 54-64 describes various systems for trading bonds and can be broken down to dealers specific system and others etc. However, there is no teaching for a syndicating loan system. There is nothing to describe ratifying their commitments etc. Col 6, line 35-46 has been previously discussed
10 above and holds no evidence of our element found in a syndicating loan system.

"in response to ratifying their commitments, lenders to execute their individual loan obligation in accordance to the terms of the bid by causing to transfer funds to the account of the loan syndicator over a network: "

- 15 The examiner provided evidence col 6 lines 35-46 which was previously discussed dealing with reverse offer bank loan auction. This merely means as explained, the buyer is soliciting the purchase of the loan and again nothing in common to being a lender in view of creating a loan obligation. As we mentioned, Herschkorn describes a loan being
20 traded while we are claiming creation of a loan by syndicating the loan. How this shows our element of transfer funds to account of the loan syndicator is unstated by the examiner.

- "in response to the said transferred funds, loan syndicator authorizing the disbursement of funds to the final borrower: "
25

- The examiner provided col 6 line 53 to col 7 line 10 which provides descriptions of the drawings Fig 1 to Fig 10 but again there are nothing inherently to show disbursement of funds to final borrower in response to transferred funds. The examiner continued by
30 saying the communication to final borrower is old and well known. The question here is why is there a need to communicate to said borrower when there is nothing in Herschkorn to show such a need for a final borrower in the trading of loans to receive funds ? Why would a borrower receive funds when the buyer is paying the seller in Herschkorn ? If funds go to the borrower as in our case then why would loan seller wants to sell without
35 receiving any consideration ?

- The examiner cited "quick, secure and timely response " as the motivation which are not specific to the issue of why is there a need to include final borrower. Nothing in Herschkorn to suggest it is not quick, insecure nor is untimely given it's a network
40 transmitting securely and by electronic means. It is well known in ALL financial network regardless of the subject matter being trading or fund transfer, the need for quick, secure and timely is paramount and could easily found in Herschkorn. As we mentioned, there is nothing to show a network for loan syndication is obvious reading Herschkorn. The

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examiner also provided no evidence to support this old ad well known feature in the brokerage art purporting to show communicating to the final borrower which we respectfully call for.

- 5 "In response to periodically loan commitments if any as determined by the loan syndicator and agreed by lenders, sent electronic notification to lenders regarding their commitments;"

10 The examiner provided col 4, line 62 to col 5 line 7 which describes the trading of bank loans whereby the details of the loans are posted to potential buyers etc. Here our element is referencing the commitments of the original lenders of the syndication and while these loans details may be the same as in Herschkorn, they are not being offered for sale. Its merely a notification of their commitments in the loan after formation which is part of the loan management process usually handled by agent.

- 15 "In response to interest and principal payments received from final borrower on a periodical basis, provide instructions to transfer the amounts to lenders in accordance to their commitments on behalf of the loan syndicator."

20 Given our structure is one of a syndication, there will be many lenders grouped by the syndicator and hence any payments received must be disbursed to these lenders in accordance to their subscribed portion. The examiner provided Fig 2 and 3 as evidence to show this element. Fig 2 shows bank loan quote information which obviously has nothing to do with our transferring of funds to the lenders in the syndicate. Fig 3 shows user page to bid for bank loan which is not relevant as self-evidence.

30 While in some cases the examiner may have attempted to identify the elements, the result as we have responded above reveals that these element do not even exists or inherently found in Herschkorn. In re Werner Kotzab, 217 F.3d 1365,1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("[A] rejection cannot be predicated on the mere identification. . . of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.").

35 The motivation cited to overcome communicating with final borrower is also too general and conclusory as it could mean any prior arts that deal in trading would include such feature. However there is no evidence that any trading system would obviously reveal a syndication system nor in the same vein would reveal a loan trading system as per Herschkorn.

40 Stated different by adopting this feature, how would one skilled in the art conclude the need to communicate with final borrower? The examiner did not state this. Therefore, said motivation also does not address why this specific proposed modification would be

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Applicant: Khai Hee Kwan

Examiner: Steven R Wasylchak

Title: Computer System and Method for online display, negotiation and management of loan syndication over computer network.

5 obvious when nothing in Herschkorn reveals a need to transfer funds to final borrower. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (Although a prior art device could have been turned upside down, that did not make the modification obvious unless the prior art fairly suggested the desirability of turning the device upside down.).

10 We submit that even if all said elements are found in Herschkorn, this by itself does not necessarily means it would be obvious without some teaching or motivation and hence desirability in view to Herschkorn to reveal the claim as a whole in facilitating loan syndication, whose function is different to trading of loans as taught in Herschkorn. In re Stencel, 828 F.2d 751, 754-55, 4 USPQ2d 1071, 1073 (Fed. Cir. 1987) (function stated in claim distinguishes from prior art). Crucially the examiner provided no motivation why one would modify Herschkorn to reach a syndication system. Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or
15 motivation to modify the teachings of that reference. See B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp., 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996).

20 According, for the reasons identified above, Applicant respectfully submits that claims 1 is patentable over Herschkorn. In the amendment, the applicant has also inserted the word "potential lender" to distinguish the difference between lenders which means those who have already lend money and those who are being committed to lend (potential). This hopefully will show our invention clearly as one for syndicating a loan where potential lenders are sought. We have also shifted many of the elements found in claim 1 to other claims and redefined it as simply for soliciting potential lenders by submitting a request
25 by syndicator, notification and to include the need for a feedback routine.

As per Claim 2

30 In rejecting this claim, the examiner provided evidence from Col 3 Line 54-65.

We respectfully transverse this rejection.

35 For the benefit of the examiner, we have reproduced the evidence from Col 3 Line 54-65 as quoted "There currently are approximately thirty (30) electronic trading systems engaged in the on-line sale and/or trading of one, two or all of treasury, municipal and corporate bonds. These systems can be broken down into dealer systems that allow users to trade only with dealers, but not with each other, cross-matching systems that allow
40 users to trade with each other anonymously, primary market bidding systems that allow users to bid directly on new issues, and a direct issuance system that allows investors to buy securities directly from the issuer. Limited information is available on most of these

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systems as access is limited to authorized users. "

5 The evidence above shows trading system that are anonymous for buyer and seller which is common in the art say in share trading. However, our claim is one where the lenders and final borrower at their discretion may be anonymous wherein its not a trading system. A trading system where the whole transaction is anonymous could not obviously reveal a syndication system where it may be anonymous. Our non-trading system must allow the anonymity to be removed in order to ratify the loan agreement else the loan agreement is not proper. There may be some instances where the entities would like their identities to be known during the syndication process rather than until ratification of the loan agreement.

15 Secondly, Herschkorn's invention is still a trading system albeit not being anonymous as one of its feature. Herschkorn requires assignment as the means to effect the trading of loans. The fact that loans are traded means the borrower's identity must be known because the loan is against the borrower that is being bought or sold. (See Fig 2 at 22 listing all the borrowers). Assignment means the loan identities must be known since it involves knowing the risk profile of the final borrower in order to secure the documentation in the form of assignment. It is not possible to execute an assignment agreement where the final borrower prefers to be anonymous. (Col 2, lines 27 to 33). Also see Col 2 line 58 to line 62 where a brokered deal is done, "Note that a dealer is not required to conduct a trade in such a manner to avoid the buyer and seller learning each others' identity. Therefore, a buyer and seller may conduct a single trade to effect the assignment and split the fee amongst themselves." which provides clear evidence so far as assignment is concerned, there is no motivation to be anonymous. As for the earlier evidence of anonymity for share trading, this also fail to show that elements for borrowers and lenders given shares are equities and as such there are no lenders or borrowers nor can one extend this to show anonymity at their discretion.

30 In summary while the art shows anonymity for share trading and Herschkorn shows without anonymity for loan trading, these by themselves could not reveal a need for discretionary anonymity for loan syndication in particular for lenders and final borrower.

35 Further, the examiner provided no motivation to show our feature. For obviousness determination a motivation must be articulated even if it is from a single prior art. We respectfully ask the examiner to allow this claim as it is patentable over Herschkorn in light of what is known in the art.

40

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5 This claim relates and dependent to Claim 2. It claims the identities privileges to the various participants subject to conditions. The examiner provided the evidence at Col 6 lines 5-16, 21-31 which explains the auction process can be blind and non-blind as well as the various elements posted on the auction by the seller of a loan. It is clear that Herschkorn's system is for existing loan (Col 6 line 7) and not as our claimed for syndicating a loan.

10 We respectfully traversed. As discussed earlier, it would not be obvious for one viewing Herschkorn to provide for a privilege routine identifying the steps priority to be executed to reveal the various identities. The evidence does not inherently shows our elements as the steps reveal an unique process of revealing syndicating members. As such the
15 applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art. Further, the examiner provided no motivation to show our feature.

20 Claim 4.

This claims refers to a feedback system and is dependent on claim 1 therefore includes all of the limitations. The examiner provided evidence in Herschkorn's claim 1 and Fig 9.
25 We respectfully traversed.

Claim 1 of Herschkorn merely refers to a system to match trades and nothing to receive feedback and response to said. Fig 9 shows an auction post confirm page which basically ask the seller to confirm his interest by compiling to credit agreement (Col 18 line 60-
30 68). We submit that a feedback system is unique to a syndication system as there are questions to be asked by the potential participants to the syndicator, such questions may pertain to information not found in the loan documentation. It is common for participants to dictate further terms in the loan documents. For example, participant may like to know whether further guarantee can be sought with the final borrower if she believes the
35 current assets placed may be inadequate etc. The nature of a syndication means other participants/lenders are dealing with the syndicator to negotiate their best interest, typically to sought how best to guarantee their own interest in the syndicated loan. For example, they may also stress a higher interest coverage ratio or current assets to be maintained at a certain level or to provide quarterly audited accounts or specific
40 covenants or query the final borrower on their projected cash flow to repay the loan etc. As an example in a typical Loan Agreements it would contain at least 12 Articles. Each Article has a number of sub articles. They are as follows:

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Article 1. - Application to Loan and Guarantee Agreements.

Article 2. - Definitions; Headings

Article 3. - Loan Account; Interest and other Charges; Repayment; Place of Payment.

5 Article 4. - Currency Provisions

Article 5. - Withdrawal of Proceeds of Loan

Article 6. - Cancellation and Suspension

Article 7. - Acceleration of maturity

Article 8. - Taxes

10 Article 9. - Cooperation and Information; Financial and Economic data; Negative Pledge; Project Implementation

Article 10.-Enforceability of Loan Agreement; Failure to Exercise Rights; Arbitration.

Article 11.-Miscellaneous Provisions

15 Article 12.-Effective Date; Termination.

In short, all potential lenders or participants will need to examine them and negotiate in good faith through a feedback system. Traditionally, participants would ring each other up and discuss in length and followed up by faxes which must be vetted by legal
20 counsels. However with a feedback system all the issues can be seen and answered for all. If accepted these requests will be incorporated in the loan documents.

We are doubtful that in view of Herschkorn such questions will be asked in a trading system. There is also no motivation to do given a trading system designed for loans
25 means there is no room to change or vary the loan terms or query future cash flows. The buyer in Herschkorn must decide either to buy based on what is already known or reject such a purchase.

30 As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

NOTE: We have also moved this element to Claim 1 to reflect the desirability of this feature and in no way conceding to the examiner's argument. Therefore this claim has been amended by moving other elements from Claim 1, in particular the loan

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management portion of the claim 1. We believe this is acceptable as we wanted to broaden the scope of the main claim 1. No new matter has been added.

5 Claim 5.

10 Without conceding to the examiner's argument, we have amended this claim as we feel this element is redundant. We have instead included the auction routine from claim 1. As we submitted previously, Herschkorn's invention is one of a loan trading system and not one of a loan syndication wherein includes an auction routine. Further, the examiner provided no motivation to show our feature.

15 As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

Claim 6.

20

This claim refers to the loan documents able to be amended online co-operatively. As we mentioned the most significant part of syndication is getting the loan document satisfied by all parties. In a trading system there is no evidence for co-operatively amending a loan document. Typically assignments are standardized form set by various exchanges and are
25 not subject to amendments by participants upon authorization by syndicator etc. Further assignment must conform with the requirements of the loan agreement (See Col 5 line 50 to 53) Our claim is for the co-operative amendment of prospective loan documents that upon agreement will create the loan and NOT assignment as found in Herschkorn.

30

The examiner provided the following evidence at Fig 9 which is basically a user offering a loan for sale and Col 6 line 53 to Col 7 line 10 wherein shows the description of the various figures found in Herschkorn.

35

We respectfully traversed. None of the above evidence could suggest or teach amending a loan document. The examiner also provided no motivation why one skilled in the art would modify a loan trading system whereby the participants could make changes to an originating document for a loan.

40

As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

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Claim 7

We respectfully traversed .

5

This claim refers to a fee being charged to the lender to participate in the syndication. The evidence provided by the examiner shows a fee for assignment. There is nothing in Herschkorn to show that a fee is charged for syndication, the subject matter not obvious. No motivation is provided by the examiner to show how one skilled in the art in view of

10

Herschkorn would include such a feature to reveal charging a fee for a syndication. As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art. However due to Applicant's re-organization of the various claims' elements as a way to economize the use of various claims, this claim has

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been deleted to give way to other pressing features. This is in no way an admission to its lack of value and may be incorporated later.

20 **Claim 8**

We respectfully traversed .

25

This claim shows the final borrower's details. The examiner provided evidence to show a seller posting a bid in Fig 9. As we mentioned, a seller here is one for an existing loan rather than in our claim where the borrower is still seeking for a loan whereby the information is generally known in the art as a term sheet. It is unlikely that details of a loan agreement (in Herschkorn) which is already finalized and executed is the same as the term sheet which is used to solicit potential lenders nor is there any motivation for one skilled in the art to modify a loan agreement so to reveal a term sheet. As mentioned previously, the feedback routine will be used extensively to amend the prospective loan agreement whereas the term sheet is merely a summary of the available terms in the prospective loan agreement. Strictly speaking a prospective loan agreement rarely

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matures into a final loan agreement as there will amendments as mentioned in claim 6.

35

As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

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We have also amended this claim to include elements from Claim 10 which we have deleted. These elements previously in Claim 10 pertains to the same in respect to what the final borrower is seeking and appropriately we consider should be included in claim

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8. Our rejection of the examiner's showing obviousness for claim 10 is recorded in claim 10 below.

5 Claim 9

We respectfully traversed .

10 This claim shows the various possible loan instruments that the final borrower is seeking. The examiner provided evidence from Col 19 Lines 24-61 which we have reproduced below for clarity.

15 "In accordance with a further embodiment of the present invention, the disclosed system and corresponding method may be applied to the trading of bonds whereby setting matching rules or utilizing auctions could increase the liquidity for, or in other words increase the number of buyers and sellers interested in, the trading of bonds. Since most bonds are traded over-the-counter, therefore through dealers acting as middlemen rather than through exchanges, and the trading in any particular issue of bond is generally not as
20 active as with stocks, there are generally a limited number of dealers through which an investor can buy or sell the desired bonds. Due to this lack of trading in any given bond, the cost of execution is generally more expensive for bonds than stocks due to a lack of liquidity or demand for secondary purchases of the bonds. Therefore dealers acting as middlemen have to spend more time and effort to execute transactions. In addition, with limited competition and limited publication of market prices, the dealers may charge a large amount or excessive mark-up for trade execution.

25 With the present invention applied to bonds, execution could be significantly more efficient as the number of potential buyers or sellers could increase and contacting these investors would be less expensive, thereby reducing the cost of execution. Furthermore, the rounding and matching method described in the present invention could increase the number of trades executed as it provides a method for matching buyers and
30 sellers of unusual amounts and sizes. For example, bonds are typically issued in amounts of \$1,000 per bond and trade in multiples of \$100,000 or 100 bonds. If a seller has 231 bonds (worth \$231,000), utilizing rules similar to that for bank loans whereby the buyers are subject to having their bids filled in odd amounts, the seller may sell its bonds to a buyer who placed a bid for 200 bonds plus or minus 50 bonds. Therefore, the rounding mechanism could increase the liquidity for odd-size trades of bonds. Further, an
35 announced auction may increase interest in any particular sale or reverse-offer purchase of bonds. "

The evidence points to an alternative use such as for bonds trading. However, as we mentioned, this claim is dependent on claim 1 whereby viewed as a whole is for
40 syndicating of a loan and while bonds and various other debt or quasi debt instruments are capable of being traded, our claimed invention calls for creating such instrument by syndication which has nothing to do with trading. The examiner also did not provide a motivation to explain why one skilled in the art in viewed of bond trading would be motivated to modify it into creating said bond by syndication process.

45 As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

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Claim 10

We respectfully traversed

5

Claim 10 refers additional information identifying the bid including the desired loan rate or cost and period of loan. As we mentioned above these elements have been moved to claim 8 and accordingly this claim is now deleted. Also note that we have amended 'bid' to a request now to reflect our syndication process is one for soliciting participation in claim 1.

10

However, we would still submit these are patentable over Herschkorn. The examiner's evidence shows Fig 9 which we mentioned is for a seller of an existing loan to sell by providing all relevant information. However, the selling of a loan by itself does not inherently shows a syndicator asking for a loan to be formed by syndication. It also does not show the relevant issues such as the loan is yet to be formed at the stage of posting it over a network. As we mentioned, with a feedback system and amendment feature, the various potential lenders could submit responses questioning different terms of the loan which could be accepted or rejected by the syndicator by amendment later. As we said this is a process known as sounding the market by suggesting desirable parameters. Fig 9 on the other hand shows a loan in existence and the seller wish to sell it by providing his or her pricing parameters. The obvious difference here is whether an existing loan inherently shows one that is in formation even if all the elements are found, the functions and the problem to be solved are different. The examiner provided no reasons to show this inherency and no motivation is evidenced for a 103(a) rejection.

15

20

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As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

30

Claim 11

We respectfully traversed.

35

Our reasoning is similar to claim 10 and accordingly we submit this. We have also moved this element to claim 8 as this pertains to borrower's requirements.

40

As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

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Claim 12

We respectfully traversed.

- 5 This claim refers to the response submitted by the lenders for the bids posted. The evidence in Fig 9 shows seller of a loan (portion owned by him). There is nothing in Herschkorn to show that such posting of a loan for sell could inherently shows our lender's response by committing to a bid for the purposes of forming a loan by syndication means. Even if every elements exist in the claim are found in Fig 9 that still
10 does not inherently shows it obvious if its functions are different. In Herschkorn it is for posting a loan for sell while we claimed the potential lenders responding to the bids and most importantly their roles in the syndication.

- 15 As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art. As noted this claim has been deleted in our amendment due to Applicant's re-organization to economize the use of claims.

Claim 13

20

We respectfully traversed.

- 25 In general the examiner's evidence premise on abstract, Fig 9, Claim 1 and Claim 3 of Herschkorn to show our claimed invention. The evidence however shows only a loan trading system and not one as claimed for negotiating and managing loan syndication, the subject matter not obvious as there is no motivation shown by the examiner. Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. See B.F. Goodrich Co. v. Aircraft Breaking Sys. Corp., 72 F.3d 1577, 1582, 37 USPQ2d 1314, 1318 (Fed. Cir. 1996).
30

- 35 A 103(a) rejection cannot be based simply by identifying the elements found rather a motivation must be articulated. No evidence is shown how a trading system could be modified for the use as claimed by the applicant. Given much of the examiner's rejection failed on its head to show prima facie (as above) and as this claim repeats much of what is already found (element wise) in method claims 1-12, we would attempt to summarize our rejection on this basis by showing said elements sought are missing or not inherently found as viewed by one skilled in the art.

40

Herschkorn's claim 1 and Fig 9 shows in general a machine for trading loans where the seller can post loans for sale as seen in Fig 9. The abstract basically repeats the same.

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- 5 In our claimed invention, our server is designed for the syndication of a loan without any trading. While we have syndicator posting bids to solicit participants, this is only so to seek participant in creating a loan for a particular borrower. Hence elements such as database of syndication information is missing. It is clear from Herschkorn in claim 1, there are sellers and buyers but in our claim, there are no buyers or sellers as the loan is yet to be formed. What is needed in our system is participants to a loan facility being offered by syndicator. In the same vein, a routine displaying an on-going syndication data would not be found in Herschkorn.
- 10 In Herschkorn's claim 3, as reproduced here for clarity " The bank loan trading method for claim 2, wherein said preset dollar amount is \$1,000,000, and said predetermined offset amount is \$100,000. "
- 15 We are unsure how this shows our auction routine element in viewed of Claim 2 from Herschkorn. The fact is that Herschkorn's method is for matching buyers and sellers while our key operative word is negotiate loan syndication commitments. We are doubtful that matching would reveal negotiating. Please note that we have deleted the words " buy and sell " as this is not appropriate given a commitment to a loan syndication by a participant could not be bought or sold strictly as known in the art. As mentioned as long as a tangible loan is not formed, then it could not be bought or sold. This is in no way conceding the examiner's argument rather its our own mistake.
- 20 As for auction routine to place automatic bid incrementally and placing of conditional bid, we submit these are not found in Herschkorn's Claim 3 as evidenced by the examiner even if in view of claim 2. A matching system does not exhibit such functionalities.
- 25 As for the feedback system, this is quite obvious not found in Herschkorn as explained above.
- 30 As for a rating system for each originator we submit this is also not found in Herschkorn as the prior art does not use an originator.
- 35 As for both programmable administrative routines, the examiner provided Fig 9 which is not relevant as Fig 9 provides an opportunity for the seller of a loan to post his loan for sell. Our administrative routines are merely there to facilitate the on going maintenance of the loan facility. We respectfully submit that the Fig 9 does not inherently shows our loan maintenance feature nor did the examiner articulate why this would be obvious or well known to reveal this inherently.
- 40 As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

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5 Recognizing that the applicant had unnecessarily narrowed this claim, we have broaden this claim by shifting much of the elements to be dependent claims as detailed in our appendix 1. The claim is left with the elements to support that it can accept request from a syndicator, receive a response from a potential lender and means for feedback and a database of syndicating information. All these elements are not found in the prior art as submitted.

10 Claim 14.

The examiner provided Fig 9 as evidence to show obviousness. We respectfully traversed.

15 This claim calls for lender to bid not loan seller as in Herschkorn. Although there are similarities the main difference lies in the object being bided. In our claim its for a loan syndication facility ie participating in a loan syndication to form a loan while in Herschkorn, it's the selling of a loan or part of it. The examiner also did not provide any reason or motivation here to show why one skilled in the art would see the posting of a
20 loan for sale would lead to one wishing to participate in a loan syndication.

As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

25 Claim 15.

30 The examiner provided Fig 9 as evidence to show obviousness. We respectfully traversed.

This claim is dependent on claim 16 and therefore includes all its limitations which we have rebutted above. On its own merit, we submit that the evidence in Fig 9 from Herschkorn does not show the syndicator and final borrower accepting the bid. As we
35 mentioned Fig 9 is for loan seller to post a loan for sale as well as to compile with the credit agreement which self-evidence that the loan is already in existence.

As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.
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5

We have amended this claim as we feel that it could be better used for another element in our re-organizing. However, this is by no means our conceding to the examiner's argument. The examiner provided claim 3 from Herschkorn as above which details preset dollar amount and pre-determined offset amount which are not found in our claim.

10

Our amendment now includes the co-operative amendment of prospective loan documents which we have previously submitted as patentable over Herschkorn (See claim 6)

15

Claim 17.

The examiner provided Fig 9 as evidence to show obviousness. We respectfully traversed. This claim is mainly for the syndicator/borrower to accept new bids to join in the syndication. This is a commonly known as over-subscription to the original amount which could not be found in selling of a loan. The second part of this claim deals with replacing previous lenders who have withdrawn from their in principle commitments. This is also common since lenders can withdraw at any time before signing and ratifying (bring into legal effect) the loan agreement. However, this is not the same as selling a loan as in Herschkorn as evidenced in Fig 9 which as detailed in said Fig is an amount already fixed. In short, once a loan is formed, and only said loan is for sale then the amount available for sale could not be deemed to be increased to accommodate more buyers. Naturally, this means higher price for the loan but it could not be an increase in the quantum of the loan. Say a loan is 100 million, then portion of this say X,Y,Z etc wherein the sum of X,Y,Z etc must equal to 100 can be sold. However, in this claim we may have an original amount requested for 100 but this amount could be increased to 200 if there are further interest. This feature for enlarging the quantum during the syndication stage is being claimed and this could not be found in Herschkorn.

35

As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

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Claim 18

- 5 The examiner provided Col 3, line 54-65 as evidence to show obviousness. We respectfully traversed. This claim is closely similar to claim 3 (difference by class) wherein the examiner provided evidence Col 6 line 5-16 and 21-31. As we have already responded on this aspect, we herein incorporate our rebuttal in said. We further include our rejection based on the cited evidence herein.
- 10 The current evidence Col 3 line 54-65 refers to general discussion of the various dealing system including anonymity. However there is nothing in the discussion to show the various privileges claimed here whereby the final borrower's need is prioritized to have first access to the lenders' identities.
- 15 The examiner also did not provide any motivation for one skilled in the art to show our feature in view of the prior art. As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

20 **Claim 19**

This claim has been amended as part of our re-organizing by moving the various dependent elements. We have moved the administrative routine from Claim 13 to this claim.

- 25 As for both programmable administrative routines found in claim 13, the examiner provided Fig 9 which is not relevant as Fig 9 provides an opportunity for the seller of a loan to post his loan for sell. Our administrative routines are merely there to facilitate the on going maintenance of the loan facility not trading. We respectfully submit that the Fig 9 does not inherently shows our loan maintenance feature nor did the examiner articulate why this would be obvious or well known to reveal this inherently.
- 30

As such the applicant respectfully submits that this claim is patentable over Herschkorn in view of what is known in the art.

35

Claim 20

- 40 This claim has been deleted as part of our re-organizing by amendment of the various dependent elements.

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Our NEW claims.

5 Claim 21 is an independent claim which is the broadest claim now. It consists of only 2 elements identifiable from other independent claims 1 and 13 which are to receive a request from syndicator and accept a commitment from potential lender.

10 We submit this claim is patentable over Herschkorn as the examiner provided no motivation to show why one skilled in the art would find it desirable to modify a loan trading system to as our claimed.

Claim 22 which is a dependent of claim 21 deals with auction routine which in light of claim 21 would not be obvious.

15 Claim 23 which is a dependent of claim 21 deals with feedback routine which in light of claim 21 would not be obvious.

20 Claim 24 which is a dependent of claim 21 deals with co-operative amending of a loan document which in light of claim 21 would not be obvious.

Claim 25 is a dependent claim of 1 but restated under a different class.

25 We believe this to be permissible as stated in §608.01(n), Manual of Patent Examining Procedures, United States Patent and Trademark Office, page 600-77 (8th Ed., August 2001), distinctly pointing out "The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper."

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The Summary of our amendments as per this response with details in Appendix 1.

- 5 It should be noted that we have also amended by clarifying that our lender element found throughout our claims have been qualified as potential lenders as strictly speaking during the syndication stage, they are not lenders as yet but only potential lenders. It is only when the loan has been executed that they become lenders.

- 10 Claim 1 (Currently Amended)
Claim 2 (Currently Amended)
Claim 3 (Currently Amended)
Claim 4 (Currently Amended)
Claim 5 (Currently Amended)
Claim 6 (Currently Amended)
15 Claim 7 CANCEL
Claim 8 (Currently Amended)
Claim 9 (Currently Amended)
Claim 10 CANCEL
Claim 11 CANCEL
20 Claim 12 CANCEL
Claim 13 (Currently Amended)
Claim 14 (Currently Amended)
Claim 15 (Currently Amended)
Claim 16 (Currently Amended)
25 Claim 17 (Currently Amended)
Claim 18 (Currently Amended)
Claim 19 (Currently Amended)
Claim 20 CANCEL
Claim 21 (NEW)
30 Claim 22 (NEW)
Claim 23 (NEW)
Claim 24 (NEW)
Claim 25 (NEW)
- 35 Total claims as per this response, 20 claims with 3 independent.